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| APPLICANT: CHENGHUA OLIVER HAN | : | DECISION ON PETITION |
| SERIAL NO. 10/027,727 | : | UNDER 37 CFR 1.81(a) |
| FILED: December 21, 2001 | : | |
| FOR: SHAPED-CHARGE | : | |

This is in response to the petition under 37 CFR 1.81(a) filed on July 7, 2010 for a corrected Examiners Answer designating new grounds of rejection

The petition is **DENIED**.

Applicant argues that the examiner has introduced and extensively relied upon the English translation of a German publication to Frye, which is considered new evidence in the 102 and 103 rejections of the claims for the first time in the examiner's answer dated May 7, 2010. Applicant requests that the examiner's answer dated May 7, 2010 be withdrawn and a corrected examiner's answer be issued, which designates the new grounds of rejection based on the English translation of the reference Frye.

The record shows that on August 11, 2009 the examiner issued a final Office action rejecting claims for the first time on a foreign language document. In the rejection, the examiner related the various elements of the claim to the figures of the document.

On November 11, 2009 a notice of appeal along with a pre-appeal brief was filed.

On February 15, 2010 an appeal brief was filed.

On May 7, 2010 the examiner issued an examiner's answer and provided an English translation of the foreign language document. In the answer and as pointed out in the petition, the examiner relied on various parts of the translated document to support his position.

MPEP 1207.03III provides guidance as to situations that may not be considered as new grounds of rejection. This section recites: "There is no new ground of rejection when the basic thrust of the rejection remains the same such that appellant has been given a fair opportunity to react to the rejection.". Additionally this section states: "Where the statutory basis for the rejection remains the same, and the evidence relied upon in support of the

rejection remain the same, a change in the discussion of, or rationale in support of, the rejection does not necessarily constitute a new ground of rejection”.

A review of the examiners final rejection correlated elements of the claim to the figures of the drawings of the foreign language document. With regard to the slot the examiner pointed to two optional areas, namely 26 and 30, or alternatively 32 or 34. Also, there was explicit discussion of the interpretation of the language “adapted to fracture”.


In the examiners answer, the specific grounds of rejection (matching of elements) remains the same as in the final rejection. However in the response to applicant’s argument section of the answer, the examiner refers to various parts of the translated document.

With respect to the “adapted to fracture” limitation in the claim the examiner does in fact point to a section of the reference for explicit support of the “adapted to fracture” language. However, his original position is supported on page 6 of the examiner’s answer beginning at line 7 which does not rely on the translated document but is more related to claim interpretation.

With respect to the slots, the examiner doesn’t appear to rely upon the translated document. In support of his position he indicates that the portion indicated as the slots, although extending in the radial fashion also “contain an axially oriented component associated with the depth of the slot and it associated orientation”. The examiners mention of an adhesive appears to be merely to direct the applicant to a specific part of the figure and is not relying on the fact that the reference contains an adhesive at all. Note that none of the claims recite the use of an adhesive.

In that the statutory basis for rejection remains the same and the examiner is relying on the figures as originally set forth in the final rejection it is determined that the evidence relied upon remains the same, although the examiner added some discussion and rationale clarifying his original position. Therefore, the petition is Denied.

Any question concerning this decision should be referred to Supervisory Patent Examiner Michael Carone at 571-272-6873.


Kathy Matecki, Director
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mc/lm: 8/20/2010

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